

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 14-91-0018 & 2015-091-01162A

Parcel No. 42-120-16-0421

Bradley & Janet Brown,

Appellant,

v.

Warren County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 11, 2016. Attorney James E. Nervig of Brick Gentry, PC, West Des Moines represented Bradley and Janet Brown. Attorney Brett Ryan of Watson & Ryan, PLC, Council Bluffs represented the Warren County Board of Review.

The Browns are the owners of property located at 3036 Cumming Avenue, Cumming. The property is 73.96 acres and is agriculturally classified. For assessment purposes, the Warren County Assessor has created three parcels identifying this property, two of which have the same legal description.

Parcel	Land & Improvements	2014 Assessment	2015 Assessment
42-120-16-0421 (parcel appealed)	Residential dwelling; showroom building; warehouse building	\$503,300	\$497,400
43-000-16-0421	34.960 acres of land; grain bin; utility building	\$83,700	\$83,800
43-000-16-0480	39 acres of land	\$66,000	\$72,900

The Browns have only appealed the assessment of Parcel 42-120-16-0421. The property's January 1, 2014 and 2015 assessments were \$503,300 and \$497,400 (respectively).

The parcel at issue includes a one-story, brick dwelling and two other outbuildings. One building is a metal pole building, used as an air-conditioned/heated showroom and office with a heated metal shop. The other pole-frame steel utility building is used as a warehouse.

The Browns' protests to the Board of Review claimed the property was assessed for more than authorized by law and that there was an error in the assessment under Iowa Code sections 441.37(1)(a)(1)(b) and (d). The Board of Review denied the protests.

The Browns then appealed to PAAB, and the appeals were consolidated for hearing.

Findings of Fact

There has been no change in the use of the property since the 2013 assessment, when PAAB previously adjudicated an appeal relating to this property. In that order, PAAB Docket 13-91-0367, we held the buildings that are again at issue in this appeal should receive the agricultural factor because they were inequitably treated as compared to similar properties in the taxing jurisdiction. (Order pp. 5-6). We likewise articulated that all non-residential improvements on agriculturally classified property should receive the agricultural factor. (Order pp. 5-6).

We note the 2013 assessment separately valued the commercial improvements; office, shop, and warehouse, and the residential dwelling to arrive at the assessment. However, in 2014 and 2015, although the property record cards separately values each of these structures, the assessor totaled them together and listed the combined value as "dwelling" on the assessment notice.

The parties stipulate the land is properly classified as agricultural realty. They also agree that the office, shop, and warehouse are used as a commercial implement dealership known as Brown Equipment. (Ex. E, 2013 record).

Nevertheless, the Browns assert the agricultural factor¹ should be applied to all improvements on the property, except the dwelling. They claim the assessed value of the improvements should be \$385,910, allocated \$335,600 to the dwelling and \$50,310 to the combined value of the office, shop, and warehouse buildings after application of the agricultural factor.

County Assessor Brian Arnold testified for the Board of Review. He reported the reason for the increase in Browns' assessment was a revaluation of all agricultural property due to changes in the Iowa Administrative Code. He further stated he removed the agricultural factor that was previously applied to the buildings' assessments in PAAB's 2013 Order. When Arnold set off the Browns' residence as a separate parcel, he moved most of their outbuildings to this parcel as well. Arnold testified that the dwelling and two of the buildings used for the implement dealership are included in the dwelling value and then the land, another building, and the grain bin are included in a separate value. The agricultural factor has been applied to the land, the additional outbuilding, and the grain bin.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

¹ In order to determine a productivity value for agricultural buildings and structures, assessors shall make an agricultural adjustment to the market value of these buildings and structures by developing an "agricultural factor" for their jurisdiction. The agricultural factor for each jurisdiction shall be the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land within the assessing jurisdiction. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. Iowa Admin. R. 701-71.3(2).

§ 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

The Browns have asserted the property is over assessed and that there is an error in the assessment. In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). An error claim under section 441.37(1)(a)(1)(d) is not limited solely to clerical or mathematical errors, but includes other claims of error. Iowa Admin. Code r. 701-71.20(4)(b)(4).

The Browns assert that because of the property's agricultural classification, the agricultural factor should be applied to all of the non-residential improvements on their property, including the buildings they use for their commercial implement dealership. They assert that nothing has changed since PAAB's previous ruling, which would require a different application of the law.

To the contrary, the Board of Review argues the Browns' buildings are now being treated uniformly with other commercially used buildings on agriculturally classified property in the county. Therefore, the Board of Review believes the circumstances are different than when PAAB issued its prior ruling. Moreover, the Board of Review asserts these buildings are clearly not agricultural buildings because they are used for a commercial purpose. The Board of Review frames the question as, "What are we to do with commercial property on agriculturally classified land?"

To resolve this question we must examine assessment procedure.

The first step in the assessment process is to classify property. Iowa Admin. Code r. 701-71.1(1). "All real estate subject to assessment by city and county assessors shall be classified as provided in [Rule 701-71.1]." *Id.* Notably, "[t]here can

be only *one classification* per property under this rule,” with an exception for multiresidential realty. *Id.* Subrule 701-71.1(1) also clearly states, “[a]n assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building.” *Id.*

The parties stipulate the Brown’s property is correctly classified as agricultural realty.

Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes *except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4).*

R. 701-71.1(3) (emphasis added). Thus, when property is classified as agricultural realty, it includes the all of the land and improvements on the parcel *except* those items set out in subrule 71.1(4), which states:

Residential real estate shall include all land and buildings which are primarily used or intended for human habitation, [...] *including those buildings located on agricultural land.* Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as part of, or in conjunction with the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods [...].

While the land and non-residential improvements are valued as agricultural realty, those buildings that fit within the exception of subrule 71.1(4) are *valued* as residential real estate as directed by law. See Iowa Code § 441.21(6) (requiring that agricultural dwellings located on agricultural land shall be valued at their market value as rural residential property).

Reading subrules 71.1(3) and 71.1(4) in conjunction with one another, if the property is classified agricultural realty, all of the land and improvements on the property are to be valued as agricultural realty under rule 701-71.3. The *only* exception to this rule is a dwelling or other improvements *used in conjunction with* the dwelling. R. 701-71.1(4).

The Board of Review does not proffer that the Browns' buildings are used in conjunction with the residence, nor does any evidence in the record suggest the buildings are used in such a manner. Rather, both parties stipulate they are used as a commercial implement dealership. Therefore, we find the Browns' buildings do not fit within the exception of subrule 71.1(4) and we will refer to them hereinafter as non-residential improvements.

Chapter 71 of the Department of Revenue's administrative rules do not contain any other exceptions for valuing non-residential improvements on agriculturally classified land, regardless whether the improvements are used for a non-agricultural purpose. To find an exception where one does not exist would amount to a rewriting of the Department of Revenue's administrative rules.

Despite the Browns commercial use of the buildings, the underlying classification of the property dictates their valuation. All of the property (land and improvements) must be valued as agricultural realty under rule 701-71.3 except the dwelling and improvements used in conjunction with the dwelling.

Subrule 701-71.3(2) requires uniform application of the agricultural factor to all buildings and structures on agricultural land. This subrule mandates that Warren County's agricultural factor should be applied to all of the Browns' non-residential improvements. This subrule does not provide an additional qualification of "agricultural building" to receive the agricultural factor. By classifying the property as agricultural, the non-residential improvements located on the property are required to be treated as agricultural buildings and structures.

For the foregoing reasons, the assessed values of the Browns' property should be modified as shown below.

2014 Assessment	PRC Costs	After 70% Ag Factor
Office	\$ 74,200	\$ 22,260
Shop	\$ 56,100	\$ 16,830
Warehouse	\$ 37,400	\$ 11,220
Dwelling	\$ 335,600	\$ 335,600
Total	\$ 503,300	\$ 385,910

2015 Assessment	PRC Costs	After 76.42% Ag Factor
Office	\$ 71,700	\$ 16,907
Shop	\$ 53,500	\$ 12,615
Warehouse	\$ 36,600	\$ 8,630
Dwelling	\$ 335,600	\$ 335,600
Total	\$ 497,400	\$ 373,752


Additionally, we note the parties referenced at least one other Warren County property that is currently being treated similar to the Browns' property. If this property is classified as agricultural realty, all of the its non-residential improvements should also receive the agricultural factor as required by law. However, we are without jurisdiction to order a change to that property or any others where they have not first protested to the Board of Review or to PAAB.

Order

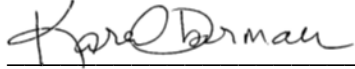
IT IS THEREFORE ORDERED that the Warren County Board of Review's action is modified as set forth herein.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

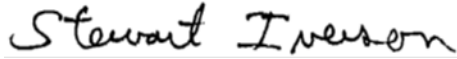
Dated this 9th day of March, 2016.



Jacqueline Rypma, Presiding Officer



Karen Oberman, Board Member



Stewart Iverson, Board Chair

Copies to:

James Nervig

Brett Ryan

Auditor